



DEFENSE LOGISTICS AGENCY
DEFENSE ENERGY SUPPORT CENTER (DESC)
Ground Fuels Division II, DESC-PLC

8725 JOHN J. KINGMAN RD, STE 4950
FT BELVOIR VA 22060-6222

FACSIMILE: (703) 767-8506 or DSN 427-8506

<http://www.desc.dla.mil>

PLEASE CHECK OUT THE DESC HOME PAGE ON THE WORLD WIDE WEB

SP0600-02-R-0101

SOLICITATION OF OFFERS

FOR SALE OF

FUEL OIL, RECLAIMED (FOR)

AT

Fleet and Industrial Supply Center (FISC)
San Diego, CA

Offers Closing Date: 27 September 2002

CONTRACT SPECIALIST: PATRICIA BURKE

PHONE: (703) 767-9503

CONTRACTING OFFICER: KATHRYN R. RISO

PHONE: (703) 767-9511

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SECTION A – SOLICITATION

A.1 Introduction/Description

a. The Defense Energy Support Center (DESC), is soliciting written offers for the sale of approximately **1,000,000** United States Gallons (USG) of Fuel Oil, Reclaimed (FOR), for lift during a two year period, located at **San Diego, CA**. Fuel to be picked-up from Tanks 44 and 63 by truck or at the fuel pier by barge, see Schedule at Exhibit A.

b. The deadline for the receipt of offers is **2:00 p.m.**, local time Fort Belvoir, Virginia, USA, on **27 September 2002**. Offers should be based on the terms and conditions set forth in this solicitation.

SECTION B – PRICE

B.1 Preparation and Submission of Offers

a. The minimum offer for this product shall be for the removal of all FOR sold during the contract period. An offer for less than the minimum quantity shall be considered non-responsive. Offerors should telephone the Contract Specialist at (703) 767-9503 or the Contracting Officer at (703) 767-9511, prior to the submission of an offer to clarify issues or resolve concerns regarding this sale initiative.

b. All offers are to be fully executed and must be submitted with an original signature appearing on the form provided in **EXHIBIT A – Solicitation/Contract for Sale of Product**. The Offeror shall:

- (1) enter the mode of pick-up to be used;
- (2) enter the unit price; and
- (3) the total price in the "Total Offered Price" column.

c. Each Offeror shall complete and furnish **SECTION I - Certifications** along with its offer.

d. Original offers and modifications submitted by mail or hand delivered shall be enclosed in a sealed envelope and addressed to:

**ATTN: BID CUSTODIAN, DESC-CPC, RM 3815
DEFENSE ENERGY SUPPORT CENTER (DESC)
8725 JOHN J. KINGMAN RD STE 4950
FORT BELVOIR VA 22060-6220**

e. Place the name and address of the Offeror in the upper left corner and the following information in the lower left corner on the face of the envelope: **Solicitation of Offers: SP0600-02-R-0101**.

f. **Offerors may submit facsimile offers** under this solicitation. These responses must arrive at the place, and by the time, specified in this solicitation (see **SECTION B.3 – Facsimile Offers, Modifications, and Withdrawals**). Offerors should use the facsimile number: **(703) 767-8506**.

g. **Offers are to be entered in the space(s) provided in EXHIBIT A – Solicitation/Contract for Sale of Product. By the submission of an offer, the Offeror agrees to be bound by the terms and conditions of this solicitation.**

h. The format for this solicitation is "negotiated", which allows the Government to discuss issues regarding price, removal period, quantity, prompt payment discounts, or any other provisions of this solicitation. However, the Government may award a contract without discussions with Offerors. ***The Government reserves the right to cancel this solicitation in its entirety if offered prices are determined to be not in the best interest of the Government.*** Therefore, each initial offer should contain the Offeror's *best* terms from a cost or price standpoint.

i. In compliance with the solicitation, the Offeror agrees, **if this offer is accepted within thirty (30) calendar days or other longer period specified in its offer**, to purchase all product on which offers are made at the price offered (pursuant to Economic Price Adjustment, See Section B.7). The offeror also agrees to take delivery of the product within the removal period specified in SECTION E - Removal of Product or within the period specified in each shipment order.

B.2 Modification and Withdrawal of Offers

- a. Offers may be withdrawn or modified by written notice or facsimile or telegram received at any time prior to the exact time specified for receipt of offers (see **SECTION B.3 – Facsimile Offers, Modifications, and Withdrawals** below).
- b. Prior to the exact time specified for receipt of offers, an offer may be withdrawn in person by an Offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

B.3 Facsimile Offers, Modifications, and Withdrawals

Offers, modifications, and withdrawals submitted by facsimile will be accepted any time prior to the exact time set for the receipt of offers. Offerors should use the facsimile number: **(703) 767-8506**.

- (1) Definition. "Facsimile offer/modification", as used in the solicitation, means an offer, a modification of an offer, or withdrawal of an offer that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.
- (2) Facsimile offers/modifications that reject any of the terms, conditions, and provisions of this solicitation, are otherwise incomplete, or contain garbled information, may be excluded from consideration.
- (3) Facsimile offers/modifications must contain the required signatures.
- (4) If requested to do so by the Contracting Officer, the apparently successful Offeror agrees to promptly submit the complete original signed offer/modification.
- (5) If the Offeror chooses to transmit a facsimile offer/modification, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile offer/modification including, but not limited to, the following:
 - (a) Receipt of garbled or incomplete offer/modification.
 - (b) Availability or condition of the receiving facsimile equipment.
 - (c) Incompatibility between the sending and receiving equipment.
 - (d) Delay in transmission or receipt of the offer/modification.
 - (e) Failure of the Offeror to properly identify the offer/modification.
 - (f) Illegibility of offer/modification.
 - (g) Security of the data contained in the offer/modification.

B.4 Late Submissions, Modifications, and Withdrawals of Offers

- a. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:
 - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 10th of the month must have been mailed by the 5th); or
 - (2) Was sent by mail and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or
 - (3) Was sent by US Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term working days excludes weekends and US Federal holidays; or
 - (4) Is the only offer received.
- b. Any modification or withdrawal of an offer, except a modification resulting in the Contracting Officer's request for a "final proposal revision", is subject to the same conditions as in Subparagraphs **a.(1), (2), and (3)** above.

B.4 Continued

- c. A modification resulting from the Contracting Officer's request for final proposal revision received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.
- d. The only acceptable evidence to establish the date of mailing of a late offer or modification sent either by registered or certified mail is the US or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the US or Canadian Postal Service. Both postmarks must show a legible date or the offer or modification shall be processed as if mailed late. Postmark means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the US or Canadian Postal Service on the date of mailing. Therefore, Offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
- e. The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.
- f. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the US Postal Service. "Postmark" has the same meaning as defined in Paragraph d. above, excluding postmarks of the Canadian Postal Service. Therefore, Offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
- g. Notwithstanding Paragraph a. above, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
- h. Offers may be modified or withdrawn by written notice, facsimile or telegram received at any time before award (see **SECTION B.3 – Facsimile Offers, Modifications, and Withdrawals**).
- i. Prior to award, an offer may be withdrawn in person by an Offeror or the offeror's authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

B.5 Consideration of Offers

- a. The Government will award a contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price, and other factors considered.
- b. The Government reserves the right to reject any or all offers, to waive any informalities and minor irregularities in an offer, and unless otherwise specified by the Offeror, to accept any one item or group of items in an offer, as may be in the best interest of the Government.
- c. The Government may award a contract on the basis of initial offers received, without discussions. Accordingly, each initial offer should be submitted on the most favorable terms, which the Offeror can submit to the Government. However, the Government reserves the right to conduct discussions if it is later determined by the Contracting Officer to be necessary.
- d. The Government reserves the right to award a quantity less than the quantity offered, at the unit price offered, unless the Offeror specifies otherwise in the offer.
- e. When more than one offer has been received for product listed in the solicitation, the Government reserves the right, at its discretion, to request final proposal revisions from those Offerors who have submitted responsive offers. In the event the Government requests final proposal revisions, a date and time for receipt of such offers will be set forth in the request. Any final proposal revisions received after the time and date specified for the receipt of final proposal revisions will not be considered unless they are received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.
- f. An Offeror may be determined to be non-responsible and therefore ineligible for award if there is a record of poor payment (e.g. checks returned for insufficient funds) or poor performance (failure to pay or remove product in a timely fashion).

B.6 Contract Award

A written award or acceptance of offer mailed or otherwise furnished to the successful Offeror within the time for acceptance specified herein [30 days] or longer as specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer) whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counter offer by the Government.

B.7 Economic Price Adjustment

(a) **WARRANTIES.** The Contractor warrants that--

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) **DEFINITIONS.** As used throughout this clause, the term--

(1) **Base price** means--

(i) The unit price offered for an item and included in the contract award schedule; or

(ii) During any subsequent program year, either the effective contract price as of the start of the subsequent program year, or the price agreed upon as of the start of the subsequent program year.

(2) **Base reference price** means the preselected reference price for an item as published on **August 26, 2002**. In the event one or more applicable reference prices are not (or were not) published on the date shown, then the term **base reference price** means the preselected reference price for an item as published on the date nearest in time prior to the date shown.

(3) **Reference price** means that published reference price or combination of published reference prices preselected by the Government for price adjustment for individual items by product, market area, and publication as specified in (d) below.

(4) **Date of delivery** means--

(i) **For TANKER OR BARGE DELIVERIES.**

F.O.B. ORIGIN. The date and time vessel commences loading.

(ii) **FOR TRUCK DELIVERIES.** The date product is received on a truck-by-truck basis.

(5) **Calendar week** means a consecutive seven-day period, beginning with whichever day of the week is specified in (c)(1) below.

(c) **ADJUSTMENTS.** Contract price adjustments shall be provided via notification through contract modifications and/or posting to the DESC web page under the heading **Doing Business with DESC** to reflect any price change pursuant to this clause.

(1) **DAY OF PUBLICATION.**

The reference price in effect on the date of delivery shall be that item's preselected reference price that is **published on the Monday** of the calendar week in which the delivery is made, or, in the event there is no publication in that week, it shall be the item's preselected reference price as last previously published.

(2) **CALCULATIONS.** The prices payable hereunder shall be determined by adding to the award price the same number of cents, or fraction thereof, that the reference price increases or decreases, per like unit of measure. All arithmetical calculations, including the final adjusted unit price, shall be carried to four decimal places, truncated.

(i) If averages are published within a given publication, then these averages will be used.

(ii) If averages are not available within a given publication, manually calculated averages will be used.

(3) **REVISION OF PUBLISHED REFERENCE PRICE.** In the event--

(i) Any applicable reference price is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the reference price consistently and substantially failed to reflect market conditions--the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on the date the reference price was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

B.7 Continued

(d) **PUBLICATION:** The following publication is used:

OPIS West Coast (Los Angeles Basin) Light Cycle Posting – Low Average of the Contract Prices

(e) **BASE REFERENCE:** The base reference price 26 August 2002 is \$.5800 Offers should be based on this reference price. Prices will be revised each Monday, by Contract Modification, to reflect the effective weekly price for sales lifted within that calendar week.

SECTION C – INSPECTION

C.1 Inspection

a. All fuel supplied by the Government shall meet or exceed specifications contained in MIL-F-24951B (SA). Specifications are included at **EXHIBIT B – Specification MIL-F-24951B (SA), 10 Feb 95**.

b. Notwithstanding Paragraph a. above, the product is sold on an “**AS-IS**” basis. Therefore, Offeror is *invited and encouraged* to inspect and sample the product currently available on-site for an idea of the general characteristics of the product to be sold prior to submitting an offer. Additional sampling throughout the year to verify the characteristics of product being picked-up is also authorized. Specification tolerances for water and other materials shall be viewed with respect to the entire offered quantity and not a discrete segment offloaded.

c. The prospective Offeror, or its designee, may at its own cost and expense, take samples not to exceed five (5) gallons. The Government does not warrant any samples of this product to be representative of the entire quantity being offered under this solicitation.

d. Inspection of the product can be arranged by calling **Digna Feria (619) 553-1326** who will act as an escort. The best time for offerors to take tests/samples is between the hours of 7:30 A.M. and 3:00 P.M. Local Time, Monday through Friday.

e. Any requests should include the name and title of each individual wishing to examine the product. The Government reserves the right to limit the number of individuals seeking access to the FISC San Diego, CA. Prospective Offerors will be notified by telephone of the time the product will be available for inspection at the FISC San Diego, CA. Requests for an appointment to inspect the product must be made to:

Mr. Ray Gomez
Fleet & Industrial Supply Center
199 Rosecranz Ave., Bldg 50.,
SAN DIEGO, CA 92106

Facsimile Number: (619) 553-1316
Telephone Number (619) 553-1317

E-Mail Address: ray_s_Gomez@sd.fisc.navy.mil

REQUESTS SHOULD BE MADE AS SOON AS POSSIBLE UPON RECEIPT OF ORDER TO SHIP.

f. Prospective Offerors, their agents, and employees shall at all times comply with applicable rules and regulations in existence at FISC San Diego, CA.

C.2 Condition of Product

a. All product listed herein is offered for sale “**AS-IS**”. “AS-IS” means the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the product, or its fitness for any use or purpose. Specification tolerances for water and other materials shall be viewed with respect to the entire offered quantity and not a discrete segment offloaded. The product will be sold in United States Gallons (USG).

b. The description of the product is based on the best information available to the Government.

SECTION D – PAYMENT

D.1 Payment

a. The Offeror agrees to pay for product awarded at the price or prices quoted in this offer or as escalated. Payments shall be made in US dollars and shall be paid to the following addressees: **Defense Finance & Accounting Services, Columbus, P.O. Box 182317, ATTN: DFAS-ADPSD/CA-F, Columbus, OH 43218-6255. Check(s) should be made payable to "U.S. Treasury"** and note the Line of Accounting: **97X4930.5CFO.01-26-S33150**. Payment of amounts due under the contract shall be made by company check, certified check, cashier's check, or bank check made payable to the designated office. All checks must be drawn on a US domestic bank. Foreign checks will not be accepted. A service charge of \$50.00 will be applied to all returned checks.

b. Payments shall be accompanied by identifying information including the contract number and a copy of the DD 250 / DD 250-1 (Inspection and Receiving Report); DD1149 (Requisition and Invoice / Shipping Document) and/or other tickets provided by the transporter to show quantity sold. Receipt document will be signed by a Government representative to verify quantity sold.

D.2 Payment Due Date

The Purchaser shall pay for the product within **ten (10) calendar days** after receipt of invoice issued by the Defense Finance and Accounting Service (DFAS); or FISC San Diego (FISC). This invoice will be issued promptly after pick-up of fuel by the Purchaser.

D.3 Title

Title to the product, and risk of loss thereof, shall pass from the Government to the Purchaser at the point the product passes into the Purchaser's barge, truck or conveyance at the pick-up location designated in **EXHIBIT A – Solicitation/Contract for Sale of Product**.

D.4 Payment Address

Defense Finance & Accounting Service [DFAS] Columbus
P.O. Box 182317
ATTN: DFAS-ADPSD/CA-F
Columbus, OH 43218-6255

D.5 Interest

a. Notwithstanding any other clause of this contract, all amounts that become payable by the Offeror to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. Simple interest shall be paid at the rate, fixed by the Secretary of the Treasury as provided in 41 USC. Section 611, which is applicable to the period in which the amount becomes due and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until the amount due is paid in full.

b. Amounts shall be due at the earliest of the following dates:

(1) **Ten (10) calendar days** after receipt of invoice issued by DFAS.

(2) The date specified under **SECTION E - Removal of Product**, Paragraph **b.**, if the Purchaser fails to remove the product within the contract removal period; or the date specified in each Order/Instructions from the Ordering Office for individual purchases under this long term sale contract.

(3) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

D.5 Continued

(4) The date the Government transmits to the Offeror a proposed settlement agreement to confirm completed negotiations establishing the amount of debt.

D.6 Letter of Credit

a. Within two (2) business days of receipt of award the Purchaser must provide the Contracting Officer an "Irrevocable Standby Letter of Credit" established in favor of the DFAS Columbus, and equal to **50%** of the contract award ("contract award" being the estimated quantity **1,000,000** USG multiplied by the award price) and containing the provisions set out in EXHIBIT D – Sample – Irrevocable Standby Letter of Credit. The Letter of Credit must be issued by a depository institution located in and authorized to do business in any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The original of the Letter of Credit must be sent to the Contracting Officer at the address specified on the cover page of this solicitation. Failure to provide the Letter of Credit may constitute grounds for termination of the contract(s) for cause.

b. The Letter of Credit must be an "Irrevocable Standby Letter of Credit," and **MUST NOT VARY IN SUBSTANCE** from the sample in EXHIBIT D. If the Letter of Credit contains any provisions at variance with EXHIBIT D, or fails to include any provisions contained in EXHIBIT D, nonconforming provisions must be deleted and any missing provisions must be added or the Letter of Credit will not be accepted. The Letter of Credit must be effective on or before the date of first pick-up under the contract, and remain in effect for the entire contract period, must permit multiple partial drawings, and must contain the contract number. The issuing bank must provide documentation indicating that the person signing the Letter of Credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

c. All wire deposit and Letter of Credit costs will be borne by the Purchaser.

d. Within 30 calendar days after the final payment under the contract, the Contracting Officer shall authorize the cancellation of the Letter of Credit and shall return it to the bank or financial institution issuing the Letter of Credit. A copy of the notice of cancellation will be provided to the Purchaser.

D.7 Cashier's Check (Optional)

In lieu of providing a Letter of Credit under SECTION D.6 above, the Purchaser may agree to pay for **50%** of product, prior to each shipment initiated under this Contract, by means of a certified or cashier's check issued by a depository institution located in and authorized to do business in any state of the United States or the District of Columbia. Prior to removing product, the Purchaser must provide a certified or cashier's check payable to "**U. S. Treasury**" for an amount equal to **50%** of the quantity of product stated in the order multiplied by the adjusted price in effect on the date of the product pick-up. The certified or cashier's check must be received, by the individual designated in the D4 Payment Office Address noted above, at or before the time and the place of the product pick-up. Any quantity discrepancies between ordered and received amounts for product will be credited to or charged to the purchaser in the following month.

The balance would be due to be paid within 10 days after receipt of invoice as noted elsewhere in this document.

SECTION E – ORDERING//REQUIREMENTS//REMOVAL OF PRODUCT

A. Ordering//Requirements:

1. This is a requirements contract for the sale of product specified, and effective for the period stated in the Contract. The quantities of product offered for sale in the contract are estimates only and are not guaranteed for sale by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in the quantities described as "estimated" or "maximum" in the contract, that fact shall not constitute the basis for an equitable price adjustment.

2. Shipping shall occur only as authorized by orders placed by the Ordering Officer [for the Selling Activity] to the Contractor. The Order will specify a specific remove by date. The Contractor shall pick-up product by the date specified in the Order. Verbal Orders may be placed, however, such verbal orders must be confirmed in writing, by facsimile, within 24 hours of the order being called to the Contractor. NOTE: Upon receipt of Order actual removal dates and shipping conditions as noted in Outloading below may be adjusted by mutual agreement between the Purchaser and the Ordering Officer or the Purchaser and the DESC Contracting Officer.

SECTION E Continued

3. Orders for truck delivery will provide a minimum notice of 48 hours to the Purchaser prior to the actual day specified for removal of the product. Orders for barge delivery will provide a minimum of 24 hours plus normal barge running time from the point of destination to the point of removal.

B. Removal:

1. The Contract period for removal of the fuel oil purchased under this Contract shall be Date of Award through 30 September 2004.

2. The product sold hereunder shall be removed from the appropriate storage facility within the time specified in the contract or order as noted above. If the Purchaser fails to remove the product on or before the last day of the order removal period through no fault of the Government, an invoice for all product remaining in storage on the last day of the order removal period will be issued by the Government to the Purchaser. The Purchaser is expected to make payment within 10 calendar days, just as if the removal had taken place as ordered. Note: Shipment dates may be adjusted by mutual agreement between the Purchaser and the Ordering Officer or Contracting Officer at DESC.

c. The contract is awarded FOB Origin. The Purchaser shall provide its own offload mechanism to receive the fuel at the pick-up location(s) designated in Exhibit "A"

SECTION F – SHIPPING

F.1 Outloading

a. The product is sold on an "AS-IS" basis. Delivery is f.o.b. carrier's conveyance. All trucks shall be fitted for bottom-loading. The FISC San Diego Fuel Department uses four (4)-inch dry break fittings for bottom-loading. The Purchaser shall furnish the Government complete shipping and document distribution instructions and the necessary commercial bills of lading to accomplish shipment. These documents shall be **furnished within three (3)-business days after an order for shipment/shipment date has been agreed between the Contractor and the Government.** Shipping instructions shall include, but not be limited to, the following:

- (1) Quantity of product to be released.
- (2) Designation of type and kind of conveyance.
- (3) Name of carrier and the name of an individual who will serve as a contact for the carrier (please include a phone number where this contact can be reached).
- (4) "Ship to" location.
- (5) Minimum load per conveyance (optional).
- (6) Desired shipping schedule.
- (7) Warning labels; as required by Federal, State, or local health, environmental, or transportation agencies.
- (8) Any additional pertinent information.

The shipping schedule furnished by the Purchaser shall be coordinated with Mr Steve Frey at FISC San Diego Fuels Department **one (1) week prior to the loading date of fuel.** Information regarding Government commitments at the storage location involved may be obtained from the address specified in Paragraph c. below. When applicable, instructions furnished shall also include the name of Purchaser's duly authorized agent who, as such, may furnish the above shipping instructions.

b. The Purchaser, its agent and employees shall at all times comply with all applicable rules and regulations existing at the **FISC San Diego, CA** and comply with all appropriate Federal, State and Local load limitations and any safety, health, and environmental requirements existing at the pick-up locations.

c. The Purchaser is solely responsible for ensuring that the proper fittings and transport equipment is provided for off loading. The government will not be held responsible for delays caused by improper off loading equipment. Shipping instructions and information requested in Paragraph a. above are to be furnished to the following address:

F.1 Continued

MR. STEVE FREY
FISC SAN DIEGO
937 N. HARBOR DRIVE, SUITE 480
SAN DIEGO, CA 92132
Facsimile Number: (619) 553-4877
Telephone Number (619) 553-1314 {EXT 239}
E-Mail: Stephen_L_Frey@sd.fisc.navy.mil

d. Offloading and pick-up(s) shall be completed **not later than the date specified in the Order or 30 September 2004.** The FOR will be issued from FISC San Diego, CA FOB-Orign into Purchaser's Barge or Tank Truck at Storage Tanks 44 and 63 (Pt. Loma). Offload Mechanicisms, see specific requirements/flow rates for each location in Exhibit A. Offloading will be performed to the extent that loading facilities and other commitments will permit.

e. The Government reserves the right to schedule and coordinate the offloading of product.

f. The product is sold subject to quantity determination as described in **SECTION F.2 – Quantity Determination.**

g. DESC should be contacted in emergencies for assistance during the off load by calling:

Operations Center, Contingency Plans and Operations Division (DESC-DL) Telephone: (703) 767-8420.

h. **The Government shall be afforded the opportunity to inspect the transport conveyance before and after offloading of the product. Furthermore, the Government shall be afforded an opportunity to retain a sample of the product dispensed into the transport conveyance. The Purchaser should report any unforeseen problems to the DESC Operations Center, Contingency Plans and Operations Division immediately, see Paragraph g. above.**

F.2 Quantity Determination

The quantity of product purchased under this contract shall be determined as follows:

a. FISC San Diego, CA Fuel Department meters or automatic tank gauges shall be used to determine the actual amounts of fuel issued depending on the mode of transport chosen by the Purchaser. These meters are calibrated semi-annually.

b. A copy of the barge, truck or other Purchaser conveyance metered loading ticket, signed for verification of quality lifted, by a Government representative at the removal site, will be provided to the Paying Office with the check paying for the fuel purchased.

F.3 Insurance Requirements

The Purchaser agrees to procure and maintain, and require any subcontractor to procure and maintain, during the term of this contract, or any extension thereof, adequate motor vehicle and general public liability and property damage insurance covering all duties and work to be performed under this contract, insuring against any third party claim for bodily injury or property damage, and Workman's Compensation and Employer's Liability Insurance and other legally required insurance for protection of employees. The motor vehicle and general public liability insurance shall provide limits of liability for bodily injury of not less than \$200,000 for each person and \$500,000 for each occurrence and property damage limits of not less than \$100,000 for each accident.

F.4 Assumption of Risk and Disclaimer of Liability

The Purchaser, its assignees or agents, assumes full responsibility for all injury or damage to persons or property occasioned by or occurring in connection with or incident to any use or possession of this product. The Government assumes no liability for any damages to the property of the Purchaser or any other person or property, or for any personal injury, illness, disability or death to the Purchaser, Purchaser's employees or any other person subject to Purchaser's control, or for any other consequential damages arising from or incident to Purchaser's control, or for any other consequential damages arising from or incident to the purchase, use, loading, processing, disposition, or any subsequent operation performed upon,

F.4 Continued

exposure to or contact with any component, part, constituent or ingredient of this item, material or substance. The Purchaser agrees to include this clause in any transportation contract for removal of the product.

F.5 Safety and Fuel Spills

a. The Purchaser shall take all measures as required by law to prevent oil spills at the pick-up locations (including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping into or onto any land or water). In the event the Contractor spills any oil the Purchaser shall be responsible for the containment, cleanup, and disposal of the oil spilled. Should the Purchaser fail or refuse to take the appropriate containment, cleanup and disposal actions, the Government may do so itself. The Purchaser shall reimburse the Government for all expenses incurred including fines levied by Federal, State or local Governments. The Purchaser shall adhere to all US Navy safety regulations while on US Navy Property.

b. At the discretion of the Ordering Officer, FISC San Diego, CA Fuel Department and/or NAVSTA San Diego Port Operations can provide for fuel containment and assist in spill cleanup on base at the pick-up location(s) designated in EXHIBIT A – Solicitation/Contract for Sale of Product.

c. Any fuel spills, which occur off base during shipment for the product, shall be the sole responsibility of the Purchaser.

F.6 Environmental Protection and Precautions of Packing Materials

a. The Purchaser hereby agrees to comply with all applicable federal, state, or local laws, governing the storage, handling, transportation, disposal, and disposition of product. **Material Safety Data Sheets as required by OSHA Hazard Communication Standard-29 CFR 1910.1200 are incorporated herein. (See EXHIBIT C - Material Safety Data Sheets).** (See also 29 CFR 1910.1000, Table Z-3). It is the responsibility of the Purchaser to further communicate this information to the distributor, manufacturer, user, and/or transporter of this material as may be required by federal regulations.

b. The purchaser shall provide documentation to the Government of compliance with 40 CFR Part 279 for any FOR burned for energy recovery.

c. The Government reserves the right to conduct reasonable inspection of the Offeror's and/or its agent's representatives, assignee's and/or vendor's transportation conveyances and/or equipment utilized to effect removal of property purchased under this offering. Such action may be accomplished prior to, during, and/or subsequent to removal of property from Government premises. The Offeror shall furnish Government employees, and/or authorized Government representatives, with access and any reasonable assistance required conducting such inspections.

HEALTH WARNING. As part of this solicitation, a specific detailed Materials Safety Data Sheet has been provided. This data provides specific toxicity and health related data for the protection of human health and the environment. Offerors should review this information carefully prior to submitting an offer. This data sheet should be reviewed carefully by all that use, handle, transport, and/or store this material. Guidance in these documents should be adhered to and communicated to all involved.

SECTION G – CONTRACT ADMINISTRATION DATA

G.1 Termination for Cause

a. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not sold, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

b. If the Government terminates the Purchaser for cause, it may subsequently resell the product for the Purchaser's account, under the terms and in the manner the Contracting Officer considers appropriate, and assess the Purchaser the difference between the contract price and the price obtained on resale as actual damages. In no event will the Purchaser be refunded any monies due to the Government obtaining a greater price on resale, nor will an accounting of money be made until resale is complete. In the event that the Government does not succeed in reselling the product within 12 months, the Purchaser may be held liable for the full contract price.

G.2 Disputes

This contract is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613) (the Act). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause of FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

G.3 Termination for the Convenience of the Government

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall only be liable for actual costs incurred by the Purchaser before the effective date of termination.

G.4 Protests

a. Protests that are filed directly with the Defense Energy Support Center and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer by obtaining written and dated acknowledgment of receipt from:

**ATTN: DENNIS STANLEY, DESC-CPB RM 3729
DEFENSE ENERGY SUPPORT CENTER (DESC)
8725 JOHN J. KINGMAN RD STE 4950
FORT BELVOIR VA 22060-6222**

b. The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

G.5 Excusable Delays

The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

G.6 Modification

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the DESC Contracting Officer; Orders may be modified by the Ordering Officer.

G.7 Officials Not to Benefit

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

G.8 Covenant Against Contingent Fees

a. The Offeror warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to add to the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

b. "Bona fide agency," as used in this Paragraph, means an established commercial or selling agency, maintained by a Purchaser for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

c. "Bona fide employee," as used in this Paragraph, means a person, employed by a Offeror and subject to the Offeror's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

d. "Contingent fee," as used in this Paragraph, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

e. "Improper influence," as used in this Paragraph, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

G.9 Extension Provisions

I209.09 EXTENSION PROVISIONS (PC&S) (DESC OCT 1994)

(a) The DESC Contracting Officer reserves the right to unilaterally extend this contract on the same terms and conditions one or more times for a total of no more than six months. Notice of contract extension will be forwarded to the Contractor 30 days prior to expiration of this contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the DESC Contracting Officer fails to issue the notice within the 30 day time frame.

(b) The foregoing extension may be exercised by the DESC Contracting Officer where continued performance is required until a follow-on contract is awarded or, in the event a follow-on contract has been awarded, until a succeeding Contractor is positioned to commence performance.

(c) Extension of this contract shall be considered to have been accomplished at the time the DESC Contracting Officer provides written notification to the Contractor by facsimile or by mail.

(DESC 52.217-9F20)

SECTION H – DEFINITIONS

As used throughout this solicitation, the following terms shall have the meaning set forth below:

a. The term "Contracting Officer" means a US Government person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

b. The term "Offeror" or "Purchaser" herein means Contractor.

(This SECTION is to be completed and returned with your offer)

SECTION I – CERTIFICATIONS

I.1 Taxpayer Identification Number (TIN)

a. All offerors must submit the information required in Paragraph **c.** below to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

b. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

c. TAXPAYER IDENTIFICATION NUMBER (TIN).

☐ TIN: _____

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. _____

I.2 Contingent Fee Representation and Agreement

a. Representation. The Offeror represents that, except for full-time bona fide employees working solely for the Offeror, the Offeror: (NOTE: The Offeror must check the appropriate boxes. For interpretation of the representation, including the term bona fide employee, See **SECTION G.8 – Covenant Against Contingent Fees**)

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

b. Agreement. The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when Subparagraph **a.(1)** or **a.(2)** above is answered affirmatively, to promptly submit to the Contracting Officer–

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same Contracting Officer, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

I.3 Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters

a. (1) The Offeror certifies, to the best of its knowledge and belief, that

(a) The Offeror and/or any of its Principals–

I.3 Continued

(i) ☐ Are, ☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by an Federal agency.

(ii) ☐ Have, ☐ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(iii) ☐ Are, ☐ are not presently indicted for, or otherwise criminally or civilly charges by a governmental entity with, commission of any of the offenses enumerated in Subparagraph **a.(1)(a)(ii)** above.

(b) The Offeror ☐ has, ☐ has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

b. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous by reason of changed circumstances.

c. A certification that any of the items in Paragraph **a.** above exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

d. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required in Paragraph **a.** above. The knowledge and information of a Offeror is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

e. The certification in Paragraph **a.** above is material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to the other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

I.4 Certifications for Intended Use of Purchased Product

a. Offeror certifies that intended use of this product is: _____

b. Offeror certifies that it is responsible for determining the applicability of any Federal, state and local taxes and fees on the product and remitting the taxes to the proper authorities.

c. Offeror certifies that product purchased under this solicitation will not be resold to the US Government.

(Offeror's Signature)

I.5 Certification for Letter of Credit/Cashier's Check (Optional)

Reference **SECTION D.6 – Letter of Credit** and **D.7 – Cashier's Check (Optional)**. Offeror **must initial** one of the following:

(a) Purchaser elects to provide a Letter of Credit in accordance with **SECTION D.6** _____ (*initial*); or
Purchaser elects to pay for product by certified or cashier's check in accordance with **SECTION D.7** _____ (*initial*).

I.6 Barge Free Time and Demurrage Charges

a. Unless the offeror indicates otherwise, free time will be unlimited.

<u>ITEM</u>	<u>FREE TIME ALLOWED</u>	<u>DEMURRAGE BEYOND FREE TIME</u>		
		<u>BARGE</u>	<u>TUG</u>	<u>OTHER</u>

Notwithstanding the above, the Government is entitled to at least as much free time as is allowed by the common carrier or that the Purchaser normally allows its regular commercial customers, whichever is greater. In addition, the Government will not pay more in detention rates than the actual rate charged by the common carrier or the rate the Purchaser normally charges its regular commercial customers, whichever is lower.

UNLESS PURCHASER INDICATES OTHERWISE, FREE TIME WILL BE CONSIDERED UNLIMITED

I.7 Transport Truck and/or Truck and Trailer Free Time and Detention Rates

a. Upon arrival of Contractor's transport truck or truck and trailer, the selling activity shall promptly designate the offload point from which the fuel will be obtained. Contractor will be paid for detention beyond free time for delays caused by the Government. **A minimum of one hour free time is required for each delivery or hook-up.**

(1) Free time for loading a transport truck, or truck and trailer in excess of one hour _____.

(2) Rate for detention beyond free time: _____.

(3) Detention rate will not be considered as part of the evaluation of offers for award.

b. Unless the offeror indicates otherwise, free time will be unlimited. Detention costs do not apply to tank wagon or to multiple drop transport truck or truck and trailer deliveries. Detention costs will be the sole responsibility of the activity incurring them. Any invoice for detention costs will be forwarded directly to the activity receiving the product.

c. Notwithstanding the above, the Government is entitled to at least as much free time as is allowed by the common carrier or that the Purchaser normally allows its regular commercial customers, whichever is greater. In addition, the Government will not pay more in detention rates than the actual rate charged by the common carrier or the rate the Purchaser normally charges its regular commercial customers, whichever is lower.

UNLESS PURCHASER INDICATES OTHERWISE, FREE TIME WILL BE CONSIDERED UNLIMITED

I.8 CLAUSE K15 – RELEASE OF UNIT PRICES

K15 RELEASE OF UNIT PRICES (DESC JUL 2002)

(a) The Defense Energy Support Center (DESC) has routinely released the unit prices of successful and unsuccessful offerors to interested parties at the conclusion of the procurement. These unit prices are the bottom-line price per unit of product. Unit price may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors. This information has been released pursuant to the Freedom of Information Act in various formats, including abstracts of offers received, bid evaluation model reports, notices to unsuccessful offerors, and other summary formats. Updated contract prices are also publicly posted on the DESC website throughout the delivery period of some contracts. Offerors have not objected to DESC's routine release or disclosure of these unit prices.

(b) DESC does not believe that release of unit prices after award causes any competitive harm. If the offeror disagrees, the offeror must provide a detailed explanation of how it will suffer competitive harm from the release of unit prices after award. The competitive harm explanation is required if the offeror either agrees to release award prices only, or does not agree with releasing any unit prices. This detailed explanation must be provided with the initial offer. DESC will use this information to determine if there is a sufficient basis to withhold the unit price after award. The offeror's indication of disagreement with release of unit prices and/or failure to provide a detailed explanation of competitive harm with the initial offer may result in release of unit prices after award. Failure to agree to the release of unit prices shall not be a factor considered in contract award.

(c) Offerors shall indicate their agreement below to the release of unit prices after award. **NOTE:** The offeror's agreement or disagreement with release of unit prices must apply to all items and may not be split to apply differently to different line items.

- ☐ Offeror **AGREES** to the release of unit prices.
- ☐ Offeror **AGREES** to the release of unit prices, but only in the event of contract award. Detailed rationale as to why the release of unit prices of unsuccessful offers would cause competitive harm is attached.
- ☐ Offeror **DOES NOT AGREE** to the release of unit prices. Detailed rationale as to why the release of unit prices would cause competitive harm is attached.

(DESC 52.224-9F25)

SECTION J – EXHIBITS

J.1 EXHIBIT A – Solicitation/Contract for Sale of FOR Product

J.2 EXHIBIT B – Specification MIL-F-24951B (SA), 10 Feb 95

J.3 EXHIBIT C – Material Safety Data Sheets

J.4 EXHIBIT D – Sample – Irrevocable Standby Letter of Credit